

# **EXHIBIT 28**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,  
Debtor.

Adv.Pro.No.  
08-01789 (BRL)

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IRVING H. PICARD, Trustee for the  
Liquidation of Bernard L. Madoff  
Investment Securities LLC,

Plaintiff,

Adv.Pro.No.  
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,  
L.P., ARIEL FUND LTD., ASCOT  
PARTNERS, L.P., GABRIEL CAPITAL  
CORPORATION,

Defendants.

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Videotaped Deposition of TINA HYUNG SURH,  
as taken by and before NANCY C. BENDISH, Certified  
Court Reporter, RMR, CRR, RSA and Notary Public of  
the States of New York and New Jersey, at the  
offices of Scott & Scott, 405 Lexington Avenue, New  
York, New York on Wednesday, September 18, 2013,  
commencing at 10:10 a.m.

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<p>1 APPEARANCES:</p> <p>2</p> <p>3 BAKER &amp; HOSTETLER, LLP 45 Rockefeller Plaza New York, New York 10111</p> <p>4 BY: EDWARD J. JACOBS, ESQ. GANESH KRISHNA, ESQ.</p> <p>5 For Irving H. Picard, Trustee for the Liquidation of BLMIS</p> <p>6</p> <p>7 DECHERT, LLP 1095 Avenue of the Americas New York, New York 10036-6797</p> <p>8 BY: NEIL A. STEINER, ESQ. DIANE PRINC, ESQ.</p> <p>9 For Gabriel Capital Corp. and J. Ezra Merkin</p> <p>10</p> <p>11 REED SMITH LLP 599 Lexington Avenue New York, New York 10022</p> <p>12 BY: CASEY D. LAFFEY, ESQ. For Gabriel, LP and Ariel Fund, LP</p> <p>13</p> <p>14 NORTON ROSE FULBRIGHT 666 Fifth Avenue, New York, New York 10103-3198</p> <p>15 BY: JUDITH A. ARCHER, ESQ. JAMI MILLS VIBBERT, ESQ.</p> <p>16 For Receiver for Ascot Partners</p> <p>17</p> <p>18 SCOTT &amp; SCOTT The Chrysler Building 405 Lexington Avenue New York, New York 10174</p> <p>19 BY: THOMAS L. LAUGHLIN, IV, ESQ. For the Witness</p> <p>20</p> <p>21 ALSO PRESENT: JUAN TORRES, Videographer</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 E X H I B I T S (Cont'd)</p> <p>2 IDENT. DESCRIPTION PAGE</p> <p>3</p> <p>4 Trustee 121 Handwritten Notes, BS00037927. 80</p> <p>5</p> <p>6 Trustee 122 Management Letter from Gabriel. 82</p> <p>7</p> <p>8 Trustee 123 Letter 4/19/02, NYU00463-67. 84</p> <p>9</p> <p>10 Trustee 124 Letter 1/20/08, NYU00253-62. 88</p> <p>11</p> <p>12 Trustee 125 Email, BS00364244-45. 91</p> <p>13</p> <p>14 Trustee 126 Email, NYU01146. 97</p> <p>15</p> <p>16 Trustee 127 NYU Endowment Fund Investment Policy Statement. 100</p> <p>17</p> <p>18 Trustee 128 Letter 12/18/08, NYU00221. 101</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3</p> <p>4 TINA HYUNG SURH</p> <p>5 Examination by: Mr. Jacob 6</p> <p>6 Ms. Princ 110</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 E X H I B I T S</p> <p>12 IDENT. DESCRIPTION PAGE</p> <p>13</p> <p>14 Trustee 111 Subpoenas. 8</p> <p>15</p> <p>16 Trustee 112 Verified Complaint. 19</p> <p>17</p> <p>18 Trustee 113 Documents In Re NYU v. Ariel Fund, et al. 29</p> <p>19 Trustee 114 Copy of a Calendar Page, NYU01836. 39</p> <p>20 Trustee 115 Two Pages Handwritten Notes. 52</p> <p>21 Trustee 116 Four Pages Handwritten Notes, BS00037928-31. 55</p> <p>22</p> <p>23 Trustee 117 Email, NYU01316-18. 57</p> <p>24</p> <p>25 Trustee 118 Email, NYU01143-45. 65</p> <p>Trustee 119 Copy of a Calendar Page, NYU01833. 70</p> <p>Trustee 120 Handwritten Notes, NYU01831 and NYU01821. 71</p>	<p>1 THE VIDEOGRAPHER: This is media</p> <p>2 number 1 of the video deposition of Tina Surh, in</p> <p>3 the matter Irving H. Picard, et al., plaintiff,</p> <p>4 versus J. Ezra Merkin, et al., defendant, in the</p> <p>5 United States Bankruptcy Court, Southern District of</p> <p>6 New York. This deposition is being held at Scott &amp;</p> <p>7 Scott, New York, New York. The time is 10:10 a.m.</p> <p>8 on September 18th, 2013.</p> <p>9 My name is Juan Torres with Bendish</p> <p>10 Reporting. I am the video specialist. And the</p> <p>11 court reporter is Nancy Bendish.</p> <p>12 Will counsel please introduce</p> <p>13 themselves, beginning with the party noticing.</p> <p>14 MR. JACOBS: Edward J. Jacobs on</p> <p>15 behalf of the Trustee.</p> <p>16 MR. KRISHNA: Ganesh Krishna on</p> <p>17 behalf of the Trustee.</p> <p>18 MS. VIBBERT: Jami Vibbert on behalf</p> <p>19 of the receiver for Ascot Partners.</p> <p>20 MS. ARCHER: Judith Archer,</p> <p>21 Fulbright &amp; Jaworski, on behalf of the Ascot</p> <p>22 receiver.</p> <p>23 MR. LAFFEY: Casey Laffey, Reed</p> <p>24 Smith, on behalf of the receiver in the Ariel and</p> <p>25 Gabriel Funds.</p>

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<p>1 MR. LAUGHLIN: We will, at a break.</p> <p>2 Q. And that disclosure additionally was</p> <p>3 not made at this meeting, correct?</p> <p>4 MS. PRINC: Object to form.</p> <p>5 A. Correct.</p> <p>6 Q. After the discussion of Mr. Madoff,</p> <p>7 was there anything else discussed at the meeting, in</p> <p>8 addition to what you've already testified about?</p> <p>9 A. Was there anything else discussed at</p> <p>10 the meeting? As I said, he -- no, I think I've</p> <p>11 covered most of the topics. Again, there were a lot</p> <p>12 of little anecdotes, right, so lots of personal</p> <p>13 family anecdotes and, you know, references to other</p> <p>14 people in the industry and so forth, but nothing --</p> <p>15 no big topic, nothing -- no, I think I've covered</p> <p>16 the -- the main -- the main topics of conversation.</p> <p>17 Q. If Mr. Merkin had disclosed to you at</p> <p>18 that meeting that the Ariel Fund was invested with</p> <p>19 Madoff, what would NYU have done?</p> <p>20 MS. PRINC: Objection to form.</p> <p>21 MR. LAUGHLIN: Objection,</p> <p>22 hypothetical.</p> <p>23 You can answer, if you can.</p> <p>24 A. Sure. You're saying if he had</p> <p>25 disclosed that NYU was invested in Madoff at that</p>	<p>1 hard to imagine, um, and that's why it's hard to</p> <p>2 answer the question of what would -- what would we</p> <p>3 have done, because now we know exactly the extent to</p> <p>4 which it was the worst case scenario.</p> <p>5 Q. Okay. I am going to hand you what I</p> <p>6 will mark Trustee's -- correct me if I'm wrong --</p> <p>7 114 -- 115.</p> <p>8 (Exhibit Trustee 115 marked for</p> <p>9 identification.)</p> <p>10 BY MR. JACOBS:</p> <p>11 Q. Have you had a chance to review?</p> <p>12 A. Oh. Would you like me to familiarize</p> <p>13 myself with my old notes?</p> <p>14 Q. Well, let me ask you this: Do you</p> <p>15 recognize this document?</p> <p>16 A. Yes.</p> <p>17 Q. What is this document?</p> <p>18 A. These are my notes.</p> <p>19 Q. Notes of what?</p> <p>20 A. The October 23rd meeting with Ezra</p> <p>21 Merkin at his offices between NYU and Maury</p> <p>22 Maertens, myself and Ezra Merkin.</p> <p>23 Q. Were these notes taken during the</p> <p>24 meeting?</p> <p>25 A. Yes.</p>
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<p>1 time, what would we have done?</p> <p>2 Q. Correct.</p> <p>3 A. I can't answer that because we have</p> <p>4 too much knowledge now.</p> <p>5 Q. What do you mean by too much</p> <p>6 knowledge now?</p> <p>7 A. We know how this -- there's -- that's</p> <p>8 an impossible-to-answer question, in terms of the</p> <p>9 hypothetical.</p> <p>10 Q. Based on your understanding at the</p> <p>11 time of that meeting, if it had been disclosed at</p> <p>12 that meeting that Ariel was invested with Madoff,</p> <p>13 would you have viewed that as an appropriate</p> <p>14 investment for NYU?</p> <p>15 MS. PRINC: Objection, form.</p> <p>16 MR. LAUGHLIN: Objection,</p> <p>17 hypothetical.</p> <p>18 You can answer, if you can.</p> <p>19 A. Sure. We would have had serious</p> <p>20 concerns, given what we had just stated, and the</p> <p>21 fact that we said that's not -- what you just</p> <p>22 described would not be an appropriate investment for</p> <p>23 an institution like our own. Therefore -- you know,</p> <p>24 so, therefore, we wouldn't -- we wouldn't want that</p> <p>25 exposure. So -- so that's where, you know, it's</p>	<p>1 Q. On the second page of the notes in</p> <p>2 the -- on the far left, there's an asterisk that's</p> <p>3 circled.</p> <p>4 A. Yeah.</p> <p>5 Q. With a note below that that says,</p> <p>6 "Ezra, that's not appropriate for an institution, so</p> <p>7 a non-starter for NYU."</p> <p>8 A. Yes.</p> <p>9 Q. Is that referring to the conversation</p> <p>10 you just testified about regarding self-clearing?</p> <p>11 A. Yes.</p> <p>12 Q. Sorry, I'm -- the writing is very</p> <p>13 small and I lost my place.</p> <p>14 A. It's okay.</p> <p>15 Q. On the second -- on the second page</p> <p>16 just to the right of that asterisk we just</p> <p>17 discussed, there's a note, and forgive me, I don't</p> <p>18 mean to misstate anything on the paper, it says:</p> <p>19 "Ezra has a family partnership there called Ascot."</p> <p>20 A. Correct.</p> <p>21 Q. Do you know what Ascot is?</p> <p>22 A. I do now.</p> <p>23 Q. At the time do you recall a</p> <p>24 discussion of Ascot?</p> <p>25 A. That was the first reference to it.</p>

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<p>1 So Ezra introduced Ascot as this family partnership 2 that he had invested at Bernie Madoff or with Bernie 3 Madoff. 4 Q. Okay. Understood. Thank you. 5 Just below that, I believe in a 6 parentheses, it says: "Ezra's father was an 7 approved person at Goldman." Is that correct? 8 A. Yes. 9 Q. Do you recall what -- what you were 10 referring to here? 11 A. Ezra told us that his father was an 12 approved person at Goldman. And I put quotes around 13 it because I didn't know at the time what approved 14 person at Goldman really meant, but it sounded very 15 impressive. And I think it had something to do with 16 the ELK Trust at the top, Eighteen Lucky Kinder, and 17 all this money that, you know, the family supposedly 18 had. 19 Q. You answered my question before I 20 could even ask it. I was going to ask you what 21 approved person at Goldman meant. 22 MR. JACOBS: I believe now might be a 23 good time for a break, if that's -- 24 THE WITNESS: Okay. 25 MR. JACOBS: -- if that's okay with</p>	<p>1 notes summarizing the meeting that we've been 2 discussing with Mr. Merkin on the 23rd of October, 3 2008, correct? 4 MS. PRINC: Object to form. 5 A. It includes that. 6 Q. Okay. Is there anything else in the 7 document in addition to a summary of the meeting 8 that we've been discussing with Mr. Merkin? 9 A. Yes. 10 Q. What is that? 11 A. He then summarizes subsequent 12 conversations that he had. 13 Q. With Mr. Merkin? 14 A. With Mr. Merkin and also Michael 15 Steinhardt. 16 Q. Is there anything in Mr. Maertens' 17 notes that jogs your memory about anything that 18 might have occurred during the meeting with 19 Mr. Merkin that we haven't discussed today? 20 A. Jogs my memory? No, I think it's 21 consistent with the notes -- with my notes that we 22 discussed about that meeting. 23 Q. And to the extent Mr. Maertens 24 discusses that meeting in these notes, is everything 25 that he has summarized regarding what occurred at</p>
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<p>1 you. 2 Also, the tape will probably need to 3 be changed shortly, so we can probably go ahead and 4 change it now. 5 THE VIDEOGRAPHER: The time is 11:30 6 a.m. This is the end of media 1. 7 (Recess taken.) 8 THE VIDEOGRAPHER: The time is 11:45 9 a.m. This begins media number 2 of the video 10 deposition of Tina Surh. 11 BY MR. JACOBS: 12 Q. I'm going to hand you what I'm 13 marking as Trustee's Exhibit 116, is where we are. 14 (Exhibit Trustee 116 marked for 15 identification.) 16 (Witness examining document.) 17 BY MR. JACOBS: 18 Q. Do you recognize this document? 19 A. I recognize Maury Maertens' 20 handwriting, so these are his notes. 21 Q. Have you seen this document prior to 22 today? 23 A. Possibly. 24 Q. The document appears to be, and 25 correct me if I'm wrong, Mr. Maertens' handwritten</p>	<p>1 that meeting consistent with your recollection? 2 MS. PRINC: Object to form. 3 A. Yes. 4 Q. When did you learn that the Ariel 5 Fund was invested with Mr. Madoff? 6 A. When did we learn when the Ariel -- 7 December, mid-December. 8 Q. What were the circumstances of your 9 learning that Ariel Fund was invested with 10 Mr. Madoff? 11 A. I was flying back from London, and I 12 got an email that made me very upset. 13 Q. I'm handing you what I'm going to 14 mark as the Trustee's Exhibit 117. 15 (Exhibit Trustee 117 marked for 16 identification.) 17 BY MR. JACOBS: 18 Q. If you could take a chance to review 19 the email, let me know when you're ready. 20 (Witness examining document.) 21 Q. Is this the email that you just 22 referenced that made you very upset? 23 A. Yes. 24 Q. Do you recognize this email? And 25 we'll start --</p>

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<p>1 Q. Did anyone at your organization, to</p> <p>2 your knowledge?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. Mr. Jacobs also asked you about the</p> <p>5 October 23rd, 2008 meeting with Mr. Merkin. Again,</p> <p>6 I don't want to go over all of that again in detail,</p> <p>7 but I just want to ask a couple of clarifying</p> <p>8 questions.</p> <p>9 A. Um-hum.</p> <p>10 Q. When Mr. Merkin brought up Madoff, he</p> <p>11 was talking about an investment with Ascot, which</p> <p>12 was another partnership he ran, correct?</p> <p>13 MR. JACOBS: Object to form.</p> <p>14 Misstates the record.</p> <p>15 A. I think you are misstating what I</p> <p>16 said.</p> <p>17 Q. Well, can you explain --</p> <p>18 A. What my notes say and what I said is</p> <p>19 that Ezra Merkin brought up the concept of the</p> <p>20 family trust that he had invested called Ascot</p> <p>21 Partners with Bernie Madoff, or that it was invested</p> <p>22 with Bernie Madoff.</p> <p>23 As to whether we should invest as NYU</p> <p>24 through Ascot or directly with Bernie Madoff, that</p> <p>25 distinction was never made.</p>	<p>1 possible at that moment, as he was changing the</p> <p>2 subject, that in addition to nodding, you know, kind</p> <p>3 of in acknowledgement of our statement, that he may</p> <p>4 also have said, I can see that, or I see your point,</p> <p>5 or something fairly benign, but as a transitional,</p> <p>6 you know, communication, to move along to the next</p> <p>7 topic.</p> <p>8 Q. Okay.</p> <p>9 A. Which is then what he did.</p> <p>10 Q. And Mr. Maertens testified in the NYU</p> <p>11 action against Mr. Merkin and others about four</p> <p>12 years ago and he testified that Mr. Merkin didn't</p> <p>13 say anything in response to the issues that you</p> <p>14 raised. Would you have any basis to disagree with</p> <p>15 his testimony?</p> <p>16 A. No. Because that's not inconsistent</p> <p>17 with what I just described.</p> <p>18 Q. Okay. Understood.</p> <p>19 You also testified about whether</p> <p>20 delegation to Mr. Madoff was consistent with</p> <p>21 Mr. Merkin's duties to Ariel. I think we just spoke</p> <p>22 about that.</p> <p>23 A. Um-hum.</p> <p>24 MR. JACOBS: Object to form.</p> <p>25 Q. I'd like to show you Ariel's</p>
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<p>1 Q. Okay. Did Mr. Merkin make it clear</p> <p>2 that Ascot was entirely or almost completely</p> <p>3 invested with Madoff?</p> <p>4 MR. JACOBS: Object to form.</p> <p>5 A. That was my conclusion based on his</p> <p>6 presentation of it.</p> <p>7 Q. Last topic.</p> <p>8 Mr. Jacobs also asked you about</p> <p>9 the -- during the October 23rd, 2008 meeting, and</p> <p>10 your reaction to the fact that Mr. Madoff</p> <p>11 self-cleared or marked his own trades. And you</p> <p>12 testified, correct me if I'm wrong, that you</p> <p>13 couldn't remember but that it was possible that</p> <p>14 Mr. Merkin may have expressed an agreement with</p> <p>15 that?</p> <p>16 MR. JACOBS: Object to form.</p> <p>17 MR. LAUGHLIN: I think it does</p> <p>18 misstate the record, but do you --</p> <p>19 A. What I -- what I believe I said, and</p> <p>20 I think the record will show what I said --</p> <p>21 Q. Of course.</p> <p>22 A. -- was that Mr. Merkin did not</p> <p>23 disclose to us the -- the exposure that we already</p> <p>24 had as NYU, as an investor in the Ariel Fund, to the</p> <p>25 Madoff investment strategy. I did say that it was</p>	<p>1 prospectus. This was an exhibit to NYU's verified</p> <p>2 complaint.</p> <p>3 A. Um-hum.</p> <p>4 Q. It's Exhibit 112 in front of you.</p> <p>5 And I believe --</p> <p>6 A. Which page?</p> <p>7 Q. It's page 13 of the --</p> <p>8 MR. STEINER: Well, first the</p> <p>9 prospectus starts about 20 pages in.</p> <p>10 Q. You found it.</p> <p>11 Did you review this prior to</p> <p>12 December 11th, 2008?</p> <p>13 A. I do not recall reviewing this</p> <p>14 prospectus prior to -- prior to that time.</p> <p>15 Q. Right.</p> <p>16 Can you please read the first</p> <p>17 sentence under "Independent Money Managers"?</p> <p>18 A. "The investment adviser may delegate</p> <p>19 investment discretion for all or a portion of the</p> <p>20 assets of the fund to money managers other than the</p> <p>21 investment adviser or make investments with other</p> <p>22 investment entities."</p> <p>23 Q. So I -- correct me if I'm wrong, but</p> <p>24 you did not -- you don't remember if you reviewed</p> <p>25 this prior to December 11th, 2008?</p>